UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,469	03/31/2004	William Hatcher	07-328-JB	6384

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EXAMINER
UTAMA, ROBERT J

ART UNIT	PAPER NUMBER
3715	

NOTIFICATION DATE	DELIVERY MODE
11/26/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	10/815,469	HATCHER ET AL.
Office Action Summary	Examiner	Art Unit
	ROBERT J. UTAMA	3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 September 2008*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-11,34 and 35* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1, 5-11 and 34-35* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Status of the application

1.   This office action is a response to the amendment and argument filed on 09/09/2008.

The current status of the application are as follows: claims 1, 5-11 and 34-35 are still

pending and claim 2-4 and 12-33 have been cancelled.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.

3.   Claim 1, 5-11 and 34-35 rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter. In order to be considered patent eligible under 35

USC 101, a claimed process must contain a sufficient tie to a machine, article of manufacture

or a composition of matter. *In re Comiskey,* 84 USPQ2d 1670 (Fed. Cir. 2007). In this case,

the claimed invention does not have a sufficient tie to any machine, article of manufacture or

a composition of matter.

4.   Additionally, claim 1, 5-11 and 34-35 are rejected under 35 U.S.C 101 since it claims

a piece of computer software (computer logic and GUI) that is not tied to a computer readable

medium.   Data structures (computer logic or GUI) that is not claimed as embodied in

computer-readable media are descriptive material per se and are not statutory because they

are not capable of causing functional change in the computer (see MPEP 2106).

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and
> distinctly claiming the subject matter which the applicant regards as his invention.

6.   The term "any special characteristic" in claim 1, 5-11 and 34-35 is a relative term

which renders the claim indefinite. The term "any special characteristic" is not defined by the

claim, the specification does not provide a standard for ascertaining the requisite degree, and

one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

At this point the examiner can not determine the metes and bound of the limitation "special

characteristic".

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived by
> the manner in which the invention was made.

8.   **Claim 1, 5, 8-9, 11 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable**

over Eckenwiller US 2003/0163292 in view of Sack Saver and further in view of

Yamamoto US 5, 265,888.

Claim 1: The Eckenwiller reference provides a teaching of a method to train a user to pack a

retail carrier bag comprising of: providing logic in a computer to evaluate whether a plurality of

virtual retail carrier bags having been properly packed with a plurality of virtual purchased

item (see paragraph 57 and FIG 17 "efficiency") said logic include packing criteria each virtual

item having a specification including weight and dimension (see paragraph 24-25),

representing plurality of virtual purchased item (see FIG 5) moving said plurality of virtual

purchased item one at time wihtin said computer in accordance with signals generated by said

user (see FIG 3-5); evaluating in said computer how closely the packing of said plurality of

virtual purchased item into said plurality of container conforms to said packing criteria (see

paragraph 57 and FIG 17) and providing feedback to the user (see FIG 17 "efficiency").

The Eckenwiler reference do not provide a teaching displaying a retail carrier bag, , presenting a virtual retail carrier bag and moving virtual item into a plurality of carrier bag and the Eckenwiller reference do not explicitly teaches that the items are presented in a random order.

The Yamamoto reference provides a teaching of presenting item in computer in a random order (see Abstract). Therefore, to provide a software that presented item in random order would have been obvious to one of ordindary skilled in the art, in view the teaching of Yamamoto, since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods (re-programming) with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention, i.e., one skilled in the art would have recognized that the random presentation used in Yamamoto would the item presentation of Eckenwiller to provide a solution from different item input presentation order.

The Sack Saver reference provides a teaching of displaying a retail carrier bag, presenting a virtual carrier bag (see Sack Saver reference FIG item 3). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of a retail carrier bag, in order to provide a simulation of different retail environment.

Claim 5: The Eckenwiller reference provides a teaching of having a packing criteria that includes the number of item packed in each container (see paragraph 25 and 57).

Claim 8: The Eckenwiller reference provides a teaching of feedback that includes the weight distribution amoong said plurality in each container (see FIG 17 "weight").

Claim 9: The Eckenwiller reference provides a teaching of a feed that include the number of virtual purchased item in each container (see FIG 17 "#Parts").

Claim 11 and 35: The Eckenwiller reference provides a teaching of a step of recording said

feedback in a database accessible to an administrator through a computer network (see

paragraph 38).

9.   **Claim 6-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Eckenwiller**

US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5, 265,888 and

further in view of Chowdury US 6,876,958.

Claim 6-7: Eckenwiler does not provide a teaching where the quantifying comprises of

determining that a crushable one of the items in one of the organized state is in a lower

position within the carrier (Claim 6, 17 and 28) or determining the breakable one of the item in

one organized state is in a lower corner position within the carrier (Claim 7,18 and 29).

However, Chowdury provides a teaching where the quantifying is determined by the

determining the fragile item be placed in a certain position in the container (see Chowdury col.

9:14-31). Therefore, it would have been obvious for one of ordinary skilled in the art to include

the feature of quantifying by the determining the fragile item be placed in a certain position in

the container, as taught by Chowdury, because it would help the user be able to take into

account possible damage (see Chowdury see 9:15-20).

10.   **Claim 10 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

Eckenwiller US 2003/0163292 in view of Sack Saver, in view of Yamamoto US 5,

265,888 and further in view of Armington US 2001/0017023.

Claim 10: TheEckenwiller reference provides a teaching of feedback that includes the total

time taken by said user to pack all said purchased item into said plurality of virtual retail bags.

However, the Armington reference provides a teaching of feedback that includes the total time

taken by said user to pack all said purchased item into said plurality of virtual retail bags (see

paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to

include the feature of feedback that includes the total time taken by said user to pack all said

purchased item into said plurality of virtual retail bags, as taught by Armington, since it would

allow the trainer to measure the efficiency of the student.

Claim 34: The Eckenwiller reference provides a teaching of a GUI of a bag item and bag weight

indicator (see FIG. 17), providing a computer linked means for a said person to manipulate said

cursor (see FIG 1 item 12), providing specification for each different item, including weight and

dimension (see paragraph 24-25), tracking a number of parameter for each training run

including total weight of item and placed in each bag and whether each item were properly

placed in said bag (see FIG 17 item "weight" , "#parts", "Efficiency"), reporting these parameter

to said person (see paragraph 38) and calculating a score for each run (see FIG 17 "efficiency").

The Eckenwiller reference fails to provide a teaching of providing a computer generated

GUI of a packing station; a simulation of plurality of different purchased item; a simulation of

at least one packing bag; a simulation of at least one packing platform; a simulation of a

conveyor bolt traveling toward said packing station; an item vertical and horizontal rotate

button; a new bag button; simulation of a grocery cart; allowing said person to rotate said

purchased item, if necessary by clicking one or both of said rotate button with cursor; allowing

said person to place at least one bag on said packing station by clicking on new bag button.

The Sack Saver reference provides a teaching of a method of training of a person in the art of

packaging purchased item comprising the step of: providing a computer generated GUI of a

packing station (see Sack Saver item 6); a simulation of plurality of different purchased item

(see Sack Saver item 1); a simulation of at least one packing bag (see Sack Saver item 3); a

simulation of at least one packing platform (see Sack Saver item 6); a simulation of a conveyor

bolt traveling toward said packing station (see Sack Saver item 1); an item vertical and

horizontal rotate button (see Sack Saver item 4); a new bag button (see Sack Saver item 2);

simulation of a grocery cart (see Sack Saver item 6); allowing said person to rotate said

purchased item, if necessary by clicking one or both of said rotate button with cursor (see Sack

Saver item 4); allowing said person to place at least one bag on said packing station by clicking

on new bag button (see Sack Saver item 2). Therefore, it would have been obvious to one of

ordinary skilled in the feature of providing a computer generated GUI of a packing station; a

simulation of plurality of different purchased item; a simulation of at least one packing bag; a

simulation of at least one packing platform; a simulation of a conveyor bolt traveling toward

said packing station; an item vertical and horizontal rotate button; a new bag button;

simulation of a grocery cart; allowing said person to rotate said purchased item, if necessary by

clicking one or both of said rotate button with cursor; allowing said person to place at least

one bag on said packing station by clicking on new bag button; as taught by Sack Saver,

TheEckenwiller reference provides a teaching of feedback that includes the total time taken by

said user to pack all said purchased item into said plurality of virtual retail bags.

However, the Armington reference provides a teaching of feedback that includes the total time

taken by said user to pack all said purchased item into said plurality of virtual retail bags (see

paragraph 75). Therefore, it would have been obvious to one of ordinary skilled in the art to

include the feature of feedback that includes the total time taken by said user to pack all said

purchased item into said plurality of virtual retail bags, as taught by Armington, since it would

allow the trainer to measure the efficiency of the student.

The examiner takes OFFICIAL NOTICE on the feature of done button, allowing said

person that has finished packing all purchased item by clicking the done button, providing

linking mean for said person to manipulate said cursor (input device) and cursor as being old

and well known in the art of graphical user interface. Therefore it would have been obvious to

one of ordinary skilled in the art to include the feature of done button and cursor because it

would enable the user to provide game input information to the system.

Response to Arguments

11.   Applicant's arguments with respect to claim 1, 5-11 and 34-35 have been considered

but are moot in view of the new ground(s) of rejection.

12.   With respect to the applicant's argument that the graphic of the Sack Saver reference

is too small and contain no written description. The Sack saver reference is only used to show

the limitation with respect to the graphics of the graphical user interface. At this point the

limitation of grocery cart, packing platform and etc are still clearly visible.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676.

The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./
Examiner, Art Unit 3715

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715